

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	File Number: EB-02-BF-015
Anastos Media Group)	
Radio Station WUAM (AM))	NAL/Acct.No.200232280002
Malta, New York)	
)	FRN: 0006-5575-99
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: June 21, 2002

By the Resident Agent, Buffalo Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture, we find that Anastos Media Group, licensee of AM broadcast station WUAM, Saratoga Springs, New York, apparently violated Section 73.49 of the Commission's Rules ("Rules") by failing to enclose the tower within an effective locked fence or other enclosure.¹ We conclude that Anastos Media Group is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. On February 7, 2002, an agent from the Federal Communications Commission's ("FCC") Enforcement Bureau's Buffalo Office conducted an inspection of the tower of radio station WUAM (AM) located in Saratoga Springs, New York. At the time of inspection, the gate providing access to the tower base was not locked and the gate was open.

3. On February 13, 2002, the Buffalo Office issued a Notice of Violation ("NOV") to Anastos Media Group citing this deficiency. On March 13, 2002, Anastos Media Group submitted a written replay stating that a new lock had been installed on the tower gate.

III. DISCUSSION

4. Section 73.49 of the Rules requires that antenna towers having radio frequency potential at the base must be enclosed within effective locked fences or other enclosures. At the time of the inspection, the gate to the fence surrounding the base of the tower was not locked and the gate was open.

¹ 47 C.F.R. § 73.49.

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5. Based on the evidence before us, we find that on February 7, 2002, Anastos Media Group willfully² violated Section 73.49 of the Rules by failing to enclose the tower within an effective locked fence or other enclosure. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303(1999) ("*Forfeiture Policy Statement*")³, sets the base forfeiture amount for failure to enclose the base of the antenna tower at \$7,000. In assessing the monetary forfeiture amount, we must take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended, ("Act"),⁴ which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require. The record reveals that Faith does have an overall history of compliance. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case and applying the inflation adjustments, we believe that a seven thousand dollar (\$7,000) monetary forfeiture is warranted

IV. ORDERING CLAUSES

6. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁵ and Sections 0.111, 0.311 and 1.80 of the Rules,⁶ Anastos Media Group is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7000) for violating Section 73.49 of the Rules.

7. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Anastos Media Group SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

8. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. 200232280002, and FRN 0006-5575-99.

9. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554, Attn: Enforcement Bureau-Technical & Public Safety

² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to Section 503(b) of the Act, provides that "[t]he term "willful", when used with reference to commission or omission of any act, means that conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act..." See *Southern California Broadcasting Co.*, 6 FCC Red 4387 (1991)

³47 C.F.R. § 1.80.

⁴ 47 U.S.C. § 503(b)(2)(D).

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. §§ 0.111, and 0.311.

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Division, and MUST INCLUDE THE NAL/Acct. No. 200232280002.

10. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

11. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Federal Communications Commission, Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁷

12. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to Anastos Media Group at 21 Commons, Malta, New York 12020.

FEDERAL COMMUNICATIONS COMMISSION

David A. Viglione
Resident Agent
Buffalo Office

⁷ See 47 C.F.R. § 1.1914.